

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

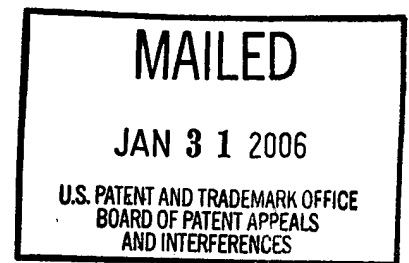
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

Ex parte LARRY A. CHRISTENSEN

Appeal No. 2006-0158  
Application No. 10/668,832

ON BRIEF



Before KIMLIN, TIMM and JEFFREY T. SMITH, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-10.

Claim 1 is illustrative.

1. A method of creating an expression of a positive feeling comprising the steps of:

taking an empty receptacle, wherein the receptacle is a package, and

placing a note on the package expressing the positive feeling to a recipient of the package and including a request that the package remain unopened but suggesting that the unopened package is filled with the positive feeling.

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The examiner relies upon the following references as evidence of obviousness:

Ledman et al. (Ledman)	4,194,629	Mar. 25, 1980
Kough	5,568,695	Oct. 29, 1996

Appellant's claimed invention is directed to a method of creating an expression of a positive feeling. The method entails placing a note that expresses the positive feeling on a package. The note includes a request that the package remain unopened but is filled with a positive feeling. Claim 5 defines a container having such a message thereon.

Appealed claims 1-10 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Ledman in view Kough.

Appellant does not present an argument that is reasonably specific to any particular claim on appeal. Accordingly, all the appealed claims stand or fall together with claim 1. In re McDaniel, 293 F.3d 1379, 1383, 63 USPQ2d 1462, 1465 (Fed. Cir. 2002).

We have thoroughly reviewed each of appellant's arguments for patentability. However, we find ourselves in complete agreement with the examiner's reasoned analysis and application of the prior art, as well as his cogent and thorough disposition of the arguments raised by appellant. Accordingly,

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we will adopt the examiner's reasoning as our own in sustaining the rejection of record, and we add the following comments for emphasis only.

Ledman, like appellant, discloses a container or package, and method of making the same, having a note thereon that expresses a positive feeling to the recipient of the package. As acknowledged by the examiner, the note depicted on Ledman's package does not include the claimed request that the package remain unopened, although the message depicted in figure 2 clearly suggests that the unopened package is filled with a positive feeling. In particular, the Ledman message reads, in relevant part "this box is filled with my love for you . . . . " As for the Ledman message not including a request that the package remain unopened, we fully concur with the examiner that the claimed message, being not functionally related to its substrate, does not serve to patentably distinguish the claimed package from the package disclosed by Ledman. See In re Gulack, 703 F.2d 1381, 1385-86, 217 USPQ 401, 404 (Fed. Cir. 1983). We note that the appealed claims, when read in light of the present specification, encompass a note comprising a substrate 20 separate and distinct from the wrapping material 12 of the package. Although appellant contends that the printed indicia

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of the claimed note "provides a functional relationship between the package and the words in that these words are what create the expression of positive feeling that is being claimed" (page 9 of brief, penultimate paragraph) this is not the type of functional relationship between the printed indicia and its substrate contemplated in Gulack.

In any event, assuming, for the sake of argument, that the claimed note satisfies the test for the aforesaid functional relationship, we are convinced that it would have been obvious for one of ordinary skill in the art to modify the message of Ledman to request that the package not be opened.

Appellant also maintains that Ledman "teaches carving the message into the box itself, or placing it within the box," which "teaches away from the present limitation of 'placing a note on the package' so that the package may remain unopened" (page 7 of brief, second paragraph). However, as explained by the examiner, the separate card or sheet 15 depicted in Ledman's figure 2 meets the requirements of the claimed note (see page 6 of answer, second paragraph). Ledman clearly teaches that the separate card or sheet 15 of figure 2 is an exterior component that comprises printed text which gives instructions to the recipient of the box (see column 1, lines 54-57).

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As a final point, we note that appellant bases no argument upon objective evidence of nonobviousness, such as unexpected results, which would serve to rebut the prima facie case of obviousness established by the examiner.

In conclusion, based on the foregoing and the reasons well-stated by the examiner, the examiner's decision rejecting the appealed claims is affirmed.


No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

Edward C. Kimlin  
EDWARD C. KIMLIN  
Administrative Patent Judge

  
CATHERINE TIMM  
Administrative Patent Judge

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JEFFREY T. SMITH  
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